IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO.82/2000

1) Venkatesh Patil,
2) Ramdas @ Ram Patil,
3) Pralhad @ Prabhu Patil,
All presently undergoing sentence
at Central Jail,
Aguda, Bardez, Goa. ..... Appellants.

V/s.

S T A T E ..... Respondents.

Mr. S.G. Dessai, Sr. Advocate with Mr. Arun Bras de Sa, Advocate for the appellants.

Mr. A.P. Lawande, Public Prosecutor for the State/ Respondent.

CORAM : A.S. AGUIAR &
P.V. HARDAS, J.J.

DATE : 5th March, 2002.

ORAL JUDGMENT :

Under challenge in this appeal is the Judgment and Order dated 26.9.2000 passed by the learned Addl. Sessions Judge, Margao convicting the accused/appellants herein for the offence punishable under Section 302, read with 34 of the Indian Penal Code and sentencing them to undergo Imprisonment for Life.

2. The learned Addl. Sessions Judge has based his Judgment and Order of conviction on the evidence of eye witnesses who have deposed as to the actual incident

as well as circumstantial evidence which, according to the learned trial Judge, cumulatively beyond reasonable doubt, point to the guilt of the accused, the appellants herein. According to the learned trial Judge, the oral testimony of the eye witnesses, namely Pw.1, Rupesh Bandekar, a neighbour of the accused and Pw.16, Anand C. Naik, a worker at the Gymkhana situate near the scene of offence, is strongly supported by other witnesses as also by the circumstances, which are as under :

(i) The accused persons are real brothers.

(ii) The accused persons had a motive against the deceased.

(iii) The scene of offence is between the compound of the Govt. Gymnasium and the tar road and there is Sateri Temple close by.

(iv) The accused nos. 1 and 3 used to go to the same Gymnasium for doing physical exercise.

(v) Recovery of blood stained knives (MO.4) and (MO.5) at the instance of accused Nos.2

and 1 respectively u/s 27 of Evidence Act.

(vi) Post Mortem Report (exbt.PW 6/A, Hurt certificate (exbt.PW 11/B) and inquest panchanama (exbt.Pw 7/A) proving the several injuries on deceased caused by sharp edged weapon (s).

(vii) Cause of death of Guruprasad, as per PW 6.

(viii) Opinions of Doctors viz. PW.6 and PW 11 that such injuries can be caused by knives MO 4 and MO 5.

(ix) Recovery of two blood stained shirts in torn pieces, of accused nos. 2 and 3 at the instance of accused no.3 u/s 27 of Evidence Act.

(x) Attachment of other clothes of all three accused, on which human blood was detected, specially the banyan of accused no.2 (exbt.5) which contained the blood of group 'O' which is the blood group of deceased, though the

blood group of accused no.2 is 'B'.

(xi) Taking of shelter by accused nos. 2 and 3 in the house of PW 13, but running away of accused no.3 from that house after arrival of police there.

3. The Judgment and Order is impugned by the appellants/accused on the grounds set out in the memo of appeal, inter alia, that the findings recorded by the learned trial Judge are contrary to the evidence on record and, therefore, perverse and that the learned trial Judge has erred in relying upon the prosecution witnesses whose conduct was not normal human conduct and that their depositions besides being contrary inter-se, do not inspire confidence and are otherwise not trustworthy.

4. Before dealing with the objections/ submissions made by learned Advocate on behalf of the appellants/accused, it is necessary to briefly summarise the case of the prosecution. The deceased Guruprasad Dhargalkar and his parents, brother Dattaprasad, Pw.19 and Patil family consisting of accused persons and others, including their sister, Rekha, are next door

neighbours. Their tenements having a common partition wall there appears to be a history of bad blood between the two neighbours for several reasons, the most notable being the allegation made by Patil Family that Dhargalkars were spoiling the name of Patil family, spreading rumours about their sister, Rekha. It appears that quarrels also used to take place over Radio or TV being played loudly as a result of which several police complaints were filed. Thus, it is clear that there was previous enmity between the two neighbouring families.

5. On the fatal day i.e. on 22.9.97 at about 20.30 hours, the deceased Guruprasad and his brother, Dattaprasad Pw.19, after dinner left the house. Guruprasad went on his new Bullet motor cycle stating that he was going to Maruti Temple. While Dattaprasad went for a walk towards railway crossing, the deceased went to the Government Gymkhana situated at Bepquegal where one Rupesh Bandekar, Pw.1 and Prasanna Mirashi, Pw.14 had gone for physical exercise. Rupesh and Guruprasad were friends. While Guruprasad and Rupesh were talking for sometime, accused No.3 was also in the Gymkhana, doing physical exercise. At about 20.45 hours, the accused No.3 went out of the Gymkhana. About 15-20 minutes later, the deceased, Rupesh (Pw.1) and Prasanna

(Pw.14) came out of the Gymkhana and waited in the compound. Just then, accused No.1 entered the compound and called out to someone. Within two minutes accused Nos.2 and 3 came towards Guruprasad and accused No.3 asked Guruprasad as to why he had abused his younger brother and tried to run his motorcycle over him. As all the accused started charging towards Guruprasad, Pw.1 Rupesh intervened and tried to stop them. Accused No.3 told Pw.1, Rupesh not to interfere. The accused persons then started dragging Guruprasad to the nearby Temple asking him to swear on oath that he had not abused their brother. Sensing more trouble, Pw.1 sent Pw.14 to call his brother, Dayesh. Pw.1, tried to stop the accused persons dragging Guruprasad. Suddenly, accused No.2 put his left arm across neck of Guruprasad from behind and held him tight, while accused No.3 caught hold of Pw.1. Thereupon accused Nos.1 and 2 removed knives from their waist belts and started stabbing Guruprasad indiscriminately on his neck, chest and back. As Guruprasad who was trying to escape, accused No.3 caught Guruprasad by his left hand and pulled him back and at the same time, shouted in Konkani "mar mar, kabar kor teka" (kill, Kill, finish him off). Guruprasad collapsed to the ground, whereupon accused No.1 appeared to inflict a stab injury with his knife on the head of Guruprasad in

the form of 'X'. Accused then fled the scene. Immediately after being released from the clutches of accused No.3, Pw.1 took the scooter of one Vikram and rushed to his house and informed Shamsudan, a cousin of Pw.1 and thereafter, went to the shop of one Atchut Bhisse, Pw.17, who is also a cousin of Pw.1. However, Dayesh was not found in the house. Pw.17, Atchut Bhise informed the police about the incident on telephone at about 21.20 hours. Thereupon, Mahesh Gaonkar, Pw.21 rushed to the spot along with his staff and took Guruprasad to P.H.C. Kakoda, where Dr. Geeta Kakodkar, Pw.11 examined him and declared him dead. Pw.11, issued Injury Certificate, Exhibit Pw.11/B in respect of the deceased Guruprasad. I.O. Mahesh Gaonkar, Pw.21 went along with Rupesh Bandekar, Pw.1 to the hospital, from where they returned to Curchorem Police Station and recorded complaint of Pw.1, being Exhibit Pw.1/A and registered the offence. Accused No.1 was arrested on 27.9.1997. Arrest Panchanama being Exhibit Pw.4/A was drawn and clothes which accused No.1 was wearing, namely half sleeves shirt of multi-colour design, on which there were blood stains, and of which collar button was missing and right sleeve was torn, as also a black full pant on which there were blood stains and mud patches, were attached. On reliable information being received, Pw.21,

same night raided the house of one Santosh Assoldekar, Pw.13 and arrested accused No.2 from the said house. However, accused No.3 who was also hiding in the said house, managed to escape. Arrest Panchanama in respect of accused No.2 is at exhibit Pw.5/A. The clothes which accused No.2 was wearing, viz. multi-colour designed bush-shirt, black pant and a banyan which were on the person of the accused, were attached. Some blood stains were seen on the banyan. Both, accused Nos.1 and 2 were referred to Hospicio Hospital, Margao where they were examined by Dr. Basavraj C. Patil, Pw.15 who issued Certificate Exhibit Pw.15/A. On 28.9.97, Inquest Panchanama, Exhibit Pw.7/A was conducted on the dead body. The clothes on the dead body, namely white shirt with chain, a blue jean pant, white pyjama and red underwear, were attached under the panchanama. On 28.9.97 between 12 noon to 3.00 p.m., Dr. Avinash Pujari, Pw.6 conducted post mortem examination on the dead body of Guruprasad who had issued the Memorandum of Autopsy, Exhibit Pw.6/A. The blood group of the deceased was shown as 'O' RH positive. The blood group of accused Nos.1 and 2 was ascertained and it was found that the blood group of accused No.1 as 'O' Rh negative and that of accused No.2 as 'B'Rh positive. The certificate is at exhibit Pw.6/C colly. The panchanama of the scene was

made which is at Exhibit Pw.2/A and sketch Exhibit Pw.2/B was also prepared. Accused No.3 was arrested on 29.3.1997 by ASI Kerkar, Pw.20 at Guddemol. Arrest Panchanama of his arrest was drawn, which is at Exhibit Pw.8/A. Clothes on the person of the accused No.3, namely one full pant, and one T-shirt were attached. Accused No.3 was examined by Pw.11, Dr. Geeta Kakodkar, who issued certificate Exhibit Pw.11/F. Blood group of accused No.3 was also ascertained and was found to be 'O' Rh positive vide Certificate Exhibit Pw.6/C. A knife MO.5 was recovered at the instance of accused No.1 under panchanama Exhibit Pw.3/A. Similarly, knife MO.4 was recovered at the instance of accused No.2 under panchanama exhibit Pw.10/A. On the next day i.e. on 1.10.97, upon disclosure statement of accused No.3, pieces of two shirts, one of yellow colour and the other of chocolate colour were recovered and attached under panchanama Exhibit Pw.9/A. Statements of witnesses namely, Pw.14, Pw.16, Pw.17 and Pw.19 were recorded, articles attached under panchanamas were sent to the Forensic Science Laboratory, Hyderabad and the report in respect thereof is at exhibit Pw.21/B colly. After completion of all the formalities, Pw.21 submitted charge-sheet in the Court of the Judicial Magistrate, First Class, Quepem, who by order dated 24.12.1997,

committed the case to the Court of Sessions, where charges were framed against the accused persons for the offences punishable under Sections 302, 201, 323 read with Section 34 of I.P.C. The charges were explained to them. All the accused pleaded not guilty and claimed to be tried. The case of the accused is of complete denial. They have not examined any witnesses in their defence.

6. The prosecution, in all, examined 21 witnesses in support of its case. The trial Judge has framed points for consideration and has given his findings in respect of all in positive, as follows :

POINTS FINDINGS

a. Whether the death of Guruprasad Dhargalkar is homicidal ? Yes.

b. Whether the prosecution has proved that the accused persons in furtherance of the common intention on 27.9.97 at 21.20 hours at Bepquegal Curchorem committed murder of Guruprasad Dhargalkar by intentionally or knowingly causing his death. Yes.

c. Whether the prosecution has proved that on 27.9.97 the accused persons in furtherance of common intention, knowing that the offence of murder in respect of Guruprasad, punishable with death or imprisonment of life having been committed in furtherance of their common intention did cause certain evidence of the said offence to disappear with the intention of screening themselves from legal punishment ? Yes.

d. Whether the prosecution has proved that on 27.6.97 at 21.10 hours at Bepquegal Curchorem, in furtherance of common intention, the accused persons voluntarily caused hurt to Shri Rupesh Bandekar. Yes.

e. What order ? What sentence ? As per the final order.

7. As stated earlier, the learned trial Judge has based his Judgment and Order of conviction on the basis of the oral testimony of eye witness Pw.1 and Pw.16, and other witnesses which, in turn, is strongly supported by circumstantial evidence, ruling out any doubt as to the truthfulness of the said witnesses. The

order of the learned trial Judge is assailed by the accused on the grounds as set out in the Memo of Appeal.

8. Before this Court, the learned Advocate on behalf of the appellants has submitted that the evidence on which the prosecution has relied, must be cogent and unimpeachable. He submitted that the evidence of Pw.1 is not that of an independent witness. He is an interested witness and, therefore, his evidence must be scrutinized closely. It is pointed out that the family of Pw.1 is, admittedly, well connected with that of the deceased. Further, it is pointed out that there is a major flaw in the evidence and the medical evidence on record. It is pointed out that Pw.1 has, in his deposition, at page 107, stated that after Guruprasad had fallen on the ground, accused No.1 Venkatesh gave a blow on the head of Guruprasad with knife in the form of scratching and explained that the said blow was in the form of 'X'. However no such injury was noticed on the head of Guruprasad either by Dr. Kakodkar, Pw.11 who has issued injury certificate, or by Dr. Avinash Pujari, Pw.6 who conducted autopsy on the dead body. In fact, Pw.6 has categorically stated that there was no injury on the top of the head. Next, it is contended that although there was a large crowd gathered at the scene of offence, most

of whom were from the Gymkhana, none was examined, except Pw.16. However, the presence of Pw.16 is no where mentioned in the complaint (FIR) recorded of Pw.1. Further, it is contended that the statement of Pw.1 is not the FIR since before lodging of the complaint, Atchut Bhise, Pw.17 had telephonically communicated the information about the incident to the police, pursuant to which the police came to the site and removed Guruprasad to the Hospital, where he was declared dead. It is, therefore, a matter of serious doubt as to whether the statement of Pw.1 or that of Atchut Bhise Pw.17 is to be treated as FIR. Further the presence of Pw.16 is doubtful. A serious objection is taken to the fact that before drawing the recovery panchanamas, statements of all the accused were recorded. Hence the police had prior information of the concealment of the articles such as knives, clothes, etc. There was, therefore, no discovery of the fact of the concealment and consequently, the recovery of articles also fails. Without prejudice, it is contended that on the basis of the evidence that has come on record, the only offence made out is one under Section 304(Part-II) IPC and not under Section 302 IPC., in view of grave and sudden provocation which caused the accused to assault the deceased.

9. On going through the impugned Judgment and Order, we find that the learned trial Judge has correctly appreciated the evidence and the circumstances in arriving at a conclusion of guilt in respect of the offence under Section 302 rad with 34 IPC. On perusal of the evidence that has come on record, it is clear that on a conspectus of the evidence, it can be said that the prosecution has proved its case beyond reasonable doubt. The eye witnesses Pw.1 and P.16 have established the presence of the accused. The presence of Pw.1, Rupesh Bandekar and Pw.14, Prasanna Mirashi at the scene of offence, was natural as they had gone to the Gymkhana for physical exercise. Pw.14 was present at the scene of offence at the initial stage, when the quarrel started till he was asked by Pw.1 to go and fetch his brother Dayesh. At that point of time all the three accused had started dragging Guruprasad to nearby Temple to state on oath that he had not abused their brother. Pw.14 thereafter returned to the scene of offence along with Rupesh, Shamsudan and Datta on scooter, where he saw Guruprasad lying on the ground and on asking Pw.1 as to what had happened, Rupesh told him that all the three accused had assaulted Guruprasad. Though the evidence as to what Guruprasad told Pw.14 is hearsay, nevertheless, it establishes the fact that when Pw.14 returned to the

scene of offence along with Rupesh, Shamsudan and Datta, Pw.1 was still present at the site when Guruprasad had fallen motionless with injuries on his neck, near the ear, on the chest and on the left face and was there till the police came and took Guruprasad to the Hospital. There is no reason to disbelieve the evidence of Pw.14 who is in no way connected with the accused and, therefore, could not be said to be an interested witness. Even the evidence of Pw.1, though he is complainant, and well connected with the deceased, cannot be discarded as that of an interested witness.

10. The evidence of Pw.1 is assailed on the ground that his conduct was not that of a normal person, since he failed to inform Dattaprasad, Pw.19, brother of the deceased about the incident immediately after he met him. Further instead of trying to get assistance of the police, he went about trying to collect his own people. The learned trial Judge has rightly appreciated the conduct of Pw.1 as not being unnatural. Although after Pw.1 met Pw.19, Datta, he did not inform him of the incident, but asked him to sit on his scooter and only after he had collected Shasudan, and when he, Pw.14 and Pw.19 were on his scooter, Pw.1 informed Pw.19 that accused Pralhad and his two brothers Venkatesh and Ramu

had killed his brother Guruprasad with knives. Reluctance on the part of Pw.1 to immediately inform Pw.19, is understandable as Pw.1 would have found it difficult to break the news to the brother of the deceased abruptly and might have considered it more appropriate to gradually break the said news to the brother of the deceased.

11. The defence considers the behaviour of Pw.19 as abnormal because Pw.19 did not inform his father on the same night about the death of Guruprasad, after he returned from the scene of offence, nor did he cry on the date of incident. Even on the next day he did not inform his father about the death of Guruprasad. This so called abnormal behaviour of Pw.19 has been rightly appreciated by the trial Judge, as it appears that by the time Pw.19 returned home, it was mid night, at which time it is probable that Pw.19's father was asleep. It is also probable that Pw.19 did not have the courage to wake up his father at the dead of night to give him the shocking news about the death of his son Guruprasad. Clearly, there is no substance in the objection of the learned Advocate for the appellant to the so called abnormal behaviour of Pw.1, the main prosecution witness and Pw.19, the brother of the deceased.

12. Much is sought to be made of the fact that Pw.1 instead of contacting the police, thought it fit to first contact and bring his brother to the scene of offence. This behaviour on the part of Pw.1 is easily explained as at the time when Pw.1 sent Pw.14 to fetch his brother, the incident had just started and seemed likely to get ugly and hence, Pw.1 may have thought it fit to send for additional help. Pw.1 at that time was not aware that the accused were armed with knives and would use the same. Hence, the action of Pw.1 in sending Pw.14 to call his brother rather than informing the police cannot be said to be unnatural. In fact, at the stage when Pw.1 sent Pw.14 to fetch his brother, there was no cause for getting the police to intervene in the matter. Another discrepancy that is sought to be highlighted is the absence of any medical evidence corroborating the statement of Pw.1 that accused No.2 gave a stab blow on the head of the deceased in the form of 'X' after he had fallen on the ground. No doubt, the said statement of Pw.1 does not find corroboration and has not been explained. However, the mere fact that the statement made by Pw.1 that the accused gave a stab with a knife on the head of the deceased is not corroborated by medical evidence, cannot be given such weightage so as to discard the entire evidence of Pw.1. Moreover, there

may be rational explanation, for the discrepancy. It is in evidence of Pw.1 that the accused had given a stab blow on the head of the deceased in the form of 'X'. It is possible that the knife in fact did not even graze the scalp of the deceased and the blow (described as a scratching blow by Pw.1) being superficial resulted in only cutting some hair from the scalp of the deceased, without in fact causing any bleeding injury to scalp of the deceased. It is pertinent to note that Pw.1 does not state that there was bleeding from the head of the deceased, after the accused inflicted the stab wound in the form of X on the head of the deceased. The presence of the scalp hair with blood on it at the scene of offence probabalizes the statement of Pw.1 about accused No.2 having inflicted the blow in the form of 'X' on the deceased. The hair obviously is of the deceased after they were cut by the knife blow. It is probable that the blood on the hair was from the scalp of the deceased or from other injuries sustained by the deceased. Thus, it cannot be concluded that the statement of the witness, Pw.1 regarding blow on the head of the deceased, is a false statement just because it is not corroborated by medical evidence. In fact, no such injury resulted on the head of the deceased when the accused apparently inflicted an 'X' wound. When looked at from this angle,

Pw.1 stands out as a very truthful and honest witness who has not been tutored. The apparent discrepancy in fact confirms that Pw.1 has deposed to what he actually saw. The learned trial Judge was, therefore, right in unhesitantly accepting the evidence of Pw.1.

13. Much is made of the fact that although Pw.16, Anand Chandru Naik, an employee of the Gymkhana has deposed about the incident, his presence at the scene of offence is not disclosed in the complaint (FIR) filed by Pw.1. It may be noted that in his evidence, Pw.16, has stated that only after hearing some noises near the gate of Gymkhana, he went outside, where he saw accused No.3 had caught hold of Rupesh by his hand and Rupesh was pleading with accused No.2 to release him. He also saw accused Nos.1 and 2 assaulting Guruprasad at some distance from Rupesh and accused No.3 and that they were assaulting him knives. He has further stated that he shouted at the accused to release Guruprasad. But accused No.3 directed him not to interfere. Pw.16 states that thereafter out of fright he returned to the Gymkhana and informed the others. Much is also sought to be made of Pw.16's statement that he saw Rupesh pleading with accused No.2 to release him when, in fact, Rupesh was held by accused No.3 and not by accused No.2. It is

obivious that it is either a typographical mistake or inadvertance on the part of the trial Judge in recording the evidence. The numerical mistake, cannot be fatal so as to disbelieve evidence of Pw.16.

14. Again it is pointed that Pw.1 has not referred to the presence of Pw.14 in the Gymkhana or near the scene of offence and that Pw.16 has not stated that the accused persons were dragging Guruprasad towards Temple. This again is easily explained. As stated earlier, Pw.16 came out of the Gymkhana only after he heard shouts and noises. He was not present at the initial stage of the incident and, therefore, he had not seen Pw.14, as he had already left to fetch the brother of Pw.1 and in the meantime, the accused had already dragged the deceased near the Temple and were assaulting him when he first saw them. Even otherwise, this minor discrepancy/omission does not in any way adversely affect the evidentiary value of the testimony given by Pw.16. Such minor discrepancies, if any, in fact go to show that this witness has not been tutored. The learned trial Judge has, therefore, rightly accepted the evidence of Pw.16 as that of an honest and truthful witness who had no reason or motive to falsely implicate the accused.

15. Pw.16 has corroborated Pw.1 and other eye witnesses and all these witnesses have also corroborated the star witness Pw.1, whose FIR has been recorded. The trial Judge has rightly accepted the oral testimony of these witnesses as proving the prosecution case.

16. Coming to the objection regarding the FIR, it is contended by the Advocate for the accused that the complaint of Pw.1 cannot be considered to be the FIR because prior to recording the complaint, Pw.17 had already telephonically informed the police about the incident and pursuant to that, the police had gone to the scene of offence and removed the deceased Guruprasad to the Hospital. Nothing really turns on this. Misconstruing a statement as FIR cannot be fatal to the prosecution case. In the case of Somappa Vamanappa Madar Shankarappa Ravanappa Kaddi v. The State of Mysore, reported in AIR 1979 SC 1831, the Apex Court has held :

> "... We agree with the learned counsel that the statement recorded from P.W.5 cannot be used as F.I.R. So far as his comment on the particulars given regarding the deceased and the accused is concerned, we feel that as they were recorded during investigation , it is probable

that the particulars were obtained when the accused who was in custody was questioned. The rejection of Ex.P-9 as F.I.R. would not detract the testimony of the eye-witnesses which will have to be assessed on its own merits."

17. Thus whether the statement of Pw.1 is the FIR or whether the telephonic message of Pw.17, is the FIR, would not really matter nor affect the evidentiary value of the testimony of Pw.1 as to the incident in respect of which he was an eye witness. Furthermore, the complaint (FIR) was lodged by Pw.1 at the earliest apparently after the incident, i.e. after the deceased was taken to the hospital. In fact, Pw.1 was in the Hospital, from where Pw.21, I.O took him directly to the Police Station, where he registered the FIR. Hence, there was no time or scope for manipulating the FIR.

18. It is in the evidence of I.O. Mahesh Gaonkar, Pw.21 that before drawing the recovery panchanama under Section 27 of the Evidence Act, he had recorded the statements of the accused persons. It is argued that since the police had prior information of concealment of the articles, there was no discovery, therefore, the recovery of articles fails. It must be pointed out that

the statements of the accused recorded by the I.O. Pw.21 in the absence of the panchas, do not contain any information that the weapons or articles were kept by the accused at a particular place. Further, recording of disclosure statement need not be made in the presence of the panchas. However, recovery of the articles must be in the presence of panchas. In State Govt. of NCT of Delhi v. Sunil and another, reported in 2001 cri.L.J.504, the Apex Court held that recovery and seizure of article made in pursuance of statement by accused, in the absence of independent witness, is not a ground to discard seizure evidence under Section 27 of Evidence Act. The Apex Court further held that there is no requirement either under Section 27 of the Evidence Act or under Section 161 of the Code of Criminal Procedure to obtain the signature of independent witness on the record in which statement of an accused is written. The legal obligation to call independent and respectable inhabitants of the locality to attend and witness the exercise made by the police is cast on the police officer when searches are made under Chapter VII of the Code. The legislative idea in insisting on such searches, to be made in presence of two independent inhabitants of the locality is to ensure the safety of all such articles meddled with and to protect the rights of the persons entitled thereto. But recovery of an object

pursuant to the information supplied by an accused in custody is different from the searching endeavour envisaged in Chapter VII of the Code. Moreover, it is not a legally approvable procedure to presume the police action as unreliable to start with, nor to jettison merely for the reason that police did not collect signatures of independent persons in the documents made contemporaneous with such actions.

19. Besides the oral testimony of eye witnesses and other corroborating witnesses which, according to the learned trial Judge prove the guilt of the accused beyond reasonable doubt, the learned Trial Judge has placed reliance on the various circumstances which according to the learned trial Judge also further corroborate the oral testimony of the eye witnesses confirming the guilt of the accused persons. The scene of offence panchanama Exhibit Pw.2/A and the sketch of the scene Exhibit Pw.2/B show that there was sufficient light at the place of the incident since there was a street lamp as well as sodium light in front of the Temple, which is 11 kms. away from the place where the incident took place and, therefore, the question of the eye witnesses having correctly seen and identified the accused persons, is not in question. Further human blood and scalp hair were found at the scene

of offence. Human blood was detected on the scalp hair as well as on the bunch of keys found at the scene of offence. Human blood stains were also found on the mud sample, MO.12 as per the report of the CFSL Exhibit Pw.21/B.

20. Circumstance of recovery of the knife MO.5 and MO.4 at the instance of the accused Nos.1 and 2 respectively under Section 27 of the Evidence Act has been proved. Pursuant to the information given by the accused persons in presence of the panchas, the knives were recovered at the instance of the accused from the place where they were hidden by the accused. The objection of the defence that the discovery statements were not recorded in the presence of the panchas is shown to be not fatal to the recovery of the knives and articles which, in fact, were done in the presence of panchas. The said knife articles 4 and 5 had blood stains on them. As per the report from the CFSL Exhibit Pw.21/B and Exhibit 21 MO.4 and exhibit 18 MO.5, the knives had human blood on them. The clothes of the accused were also recovered under the panchanamas. The report of the CFSL Hyderabad Exhibit Pw.21/B clearly shows that both MO.1 (pant of accused No.1) and MO.2 (shirt of accused No.1) had human blood on them. However, the most clinching piece of evidence, so far as accused No.2 is concerned, is the

report of the CFSL, Hyderabad Exhibit Pw.21/B Collectively which showed that banyan of accused No.2, exhibit 5, had human blood of Group 'O'. The blood group of accused No.2 as per the certificate Exhibit P.6/C issued by Pw.6 Dr. Avinash Pujari is, 'B' Rh-positive. Accused No.2 has also admitted in his statement that his blood group is 'B' Rh-positive. The post-mortem report Exhibit Pw.6/A, read with the deposition of Dr. Avinash Pujari, Pw.6, showed that the blood group of the deceased Guruprasad was 'O' Rh-positive. Although in his statement under Section 313 Cr.P.C. accused No.2 has denied that the banyan was his, it is proved beyond doubt that the said benyan was worn by accused No.2 when he was arrested on 28.9.97 just seven hours after the incident. Moreover, the depositions of Pw.5 and Pw.21 read with panchanama Pw.5/A conclusively prove that the banyan was recovered from the body of accused No.2. The presence of blood group 'O', which is the blood group of the deceased, on the banyan of accused No.2 is a clinching circumstance against accused No.2. Human blood was also found on the pant of accused No.2 as per exhibit Pw.21/B.

21. Another very important circumstance implicating the accused is the motive for committing the murder. Dattaprasad, Pw.19, the brother of the deceased

has deposed that the accused persons are their next door neighbours and there were frequent quarrels between the families of the accused and the deceased over playing of loud music. But what is more important, is that Pw.19 has also in his cross examination stated that the accused persons used to abuse his family members accusing them of spoiling the name of their sister Rekha. Accused Nos. 1 and 2 have, in fact in their 313 statement admitted that the deceased was friendly with their sister Rekha and prior to the incident the deceased had broken his relations with their sister. Thus although the incident apparently started by the accused persons questioning Guruprasad as to why he tried to run the motor cycle on their brother, the real motive for the murder of the deceased by the accused was the relationship which the deceased was having with their sister whose marital prospects were blighted by the deceased Guruprasad breaking off relations with their sister.

22. The learned trial Judge has evaluated and appreciated the evidence of the eye witnesses and other witnesses and the circumstantial and other evidence in correct perspective and rightly held that the guilt of the accused as proved beyond reasonable doubt.

23. A feeble attempt was made by the defence to show that a very important circumstance has not been proved namely; the injuries sustained by the accused persons in the incident. It is the contention of the learned Advocate for the accused that it was for the prosecution to explain the injuries sustained by the accused persons and in support thereof, he has relied upon the decision in the case of State of Rajasthan v. Madho and another, A.I.R. 1991 S.C. 1065 wherein the Apex Court was of the view that where the injuries were sustained by the accused persons in same incident in which offences under Sections 302, 326 I.P.C. are alleged to have been committed by them and the prosecution witnesses failing to explain those injuries, their testimony giving the impression that they are suppressing some part of the incident, the accused must be entitled to the benefit of doubt. In the instance case, the learned trial Judge has accepted that accused No.1 sustained injury on the front tip of the right index finger and abrasion over the front of the middle of left forearm and accused No.2 on his index finger and left forearm. These injuries sustained by the accused at the time of the incident, have not been explained and hence a strong circumstance against the said accused persons remains unproved and the benefit of doubt must, therefore, be given to the accused. The learned

Counsel for the accused relying on the decision cited above, has submitted that it was for the prosecution to prove the injuries sustained by the accused and since the prosecution witnesses have failed to even mention the same, an inference has to be drawn that the prosecution witnesses were not telling the truth. That the eye witnesses in failing to mention the injuries and the prosecution failing to prove how the accused suffered the injuries, were concealing the true facts and therefore, the accused ought to be given benefit of doubt and, therefore, such a finding clearly would be, in the facts of the case, a perversity of justice. The injuries, it may be noted, are not serious injuries. The prosecution is not obliged to explain such simple injuries, for being the simple injuries, the eye witnesses are not expected to have noticed how and when the accused persons sustained these injuries and not having noticed the injuries, the prosecution could not be expected to explain the same. The nature of the injuries sustained by the accused are, in fact, consistant with acts of assaulting and stabbing the deceased with knives. It is not even the case of the defence that there was a fight and the deceased used any weapon or any force as a result of which the accused suffered the minor injuries. Obviously, there would have been a scuffle with the deceased tryng to escape from the

clutches of the accused being attacked and in the process the accused persons themselves sustaining the minor injuries. The question of the prosecution witnesses explaining how the accused suffered the injuries, does not arise and drawing any inference so as to give the accused benefit of doubt also does not arise. In the case of Vijayee Singh and others v. State of U.P., A.I.R. 1990 SC 1459, the Apex Court observed as follows :

> " As discussed above we are satisfied in this case that non-explanation of injuries on these two accused persons does not affect the prosecution case as a whole but in a case of this nature what all that the defence can contend on the basis of non-explanation of injuries found on these two accused is that the accused could have had a right of private defence or at any rate a reasonable doubt arises in this regard."

24. Further in Takhaji Hiraji v. Thakore Kubersing Chamansing and others, 2001 Cri.L.J. 2602, the Apex Court held :

> " It cannot be held as a matter of law or

invariably a rule that whenever accused sustained an injury in the same occurrence, the prosecution is obliged to explain the injury and on the failure of the prosecution to do so the prosecution case should be disbelieved. Before non-explanation of the injuries on the person of the accused persons by the prosecution witnesses may affect the prosecution case, the Court has to be satisfied of the existence of two conditions : (i) that the injury on the person of the accused was of a serious nature; and (ii) that such injuries must have been caused at the time of the occurrence in question. Non-explanation of injuries assumes greater significance when the evidence consists of interested or partisan witnesses or where the defence gives a version which competes in probability with that of the prosecution. Where the evidence is clear, cogent and creditworthy and where the Court can distinguish the truth from falsehood the mere fact that the injuries on the side of the accused persons are not explained by the prosecution cannot by itself be a sole basis to reject the testimony of the prosecution witnesses and consequently the whole

of the prosecution case.

> Therefore, in overthrowing the entire prosecution case for non-explanation of the injuries sustained by the accused persons, with out making an effort at searching out the truth on the material available on record as also to find out how much of the prosecution case was proved beyond reasonable doubt and was worthy of being accepted as truthful, was not proper."

25. In the present case, it is seen that the injuries sustained by the accused persons, are minor injuries. It seems highly probable that same could not have been noticed by the eye witnesses at the time of the incident. It is not the case of the defence that they were acting in self defence. In fact their defence is one of total denial. The question of prosecution, therefore, proving the minor injuries sustained by the accused persons and giving the accused benefit of doubt for failure to explain the same does not arise. In the light of the above, the objection of the learned Advocate for the defence requires to be rejected.

26. The impugned Judgment and Order of the trial

Court is a well reasoned order and the conclusion of the guilt arrived at by the learned trial Judge on the basis of the oral testimony of eye witnesses and other witnesses, as well as of the proved circumstances, is justified. We see no reason to interfere with the said order. In view thereof, the appeal stands rejected and accordingly dismissed and disposed of.

A.S. AGUIAR, J

P.V. HARDAS, J.

ssm.